

Service Date: September 8, 1998

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF The Petition of)	UTILITY DIVISION
AT&T Communications of the Mountain)	
States, Inc. Pursuant to 47 U.S.C. Section)	DOCKET NO. D96.11.200
252(b) for Arbitration of Rates, Terms,)	
and Conditions of Interconnection With)	ORDER NO. 5961g
U S WEST Communications, Inc.)	

ORDER CLARIFYING APPROVAL OF INTERCONNECTION AGREEMENT

AT&T Communications of the Mountain States, Inc. (AT&T) filed a request on August 17, 1998, seeking clarification of Order No. 5961f, the Commission's order approving the interconnection agreement between AT&T and U S WEST Communications, Inc. (U S WEST). AT&T states that it does not understand in what way Section 1.2.3 of Attachment 3 of the agreement fails to comply with past Commission orders.

Section 1.2.3 of Attachment 3 requires AT&T to pay the wholesale rate for a service combination of UNEs that replicates a U S WEST retail service, even if AT&T provides operator services and directory assistance. This is consistent with the Commission's decision in Order No. 5961e, at & 11, which reiterates that AT&T must pay the rebundling charge when U S WEST combines the elements.

However, the provision does not clearly address the rate AT&T is to pay when it provides services using some of its own facilities and some UNEs purchased from U S WEST or when it performs the combinations. This is why the Commission rejected this portion of the parties'

interconnection agreement. AT&T states that the section provides that AT&T will pay cost-based rates, not the wholesale rate, if it provides its own switching or loop. AT&T further states that Section 1.2.3 is consistent with pages 36 through 38 of the Commission's Arbitration Decision and Order, Order No. 5961b, dated March 20, 1997. The precise language in the agreement is:

If AT&T provides a service that replicates a retail service provided by U S WEST, and if it provides that service solely by combining U S WEST's Network Elements, without providing any of the elements itself and without using AT&T's own Loop or switching functionality to produce the service, AT&T's compensation to U S WEST shall be equal to U S WEST's wholesale rate for that service.
...

The Commission's decision in Order No. 5961b, requiring a rebundling charge for combinations of network elements that replicate a U S WEST service, was premised on the idea that U S WEST would provide combinations of elements for AT&T. Subsequently, the decision in Iowa Utils. Bd., et al. v. FCC, 120 F.3d 793 (8th Cir., 1997), *amended on reh'g*, 135 F.3d 535 (Oct. 14, 1997), *cert. granted, sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 118 S.Ct. 683 (1998), provided that an incumbent local exchange carrier is not required to combine elements for competitors or to provide services in existing combinations ("the Act does not require the incumbent LECs to do *all* the work"). The Commission concluded that existing combinations, however, could not be unbundled unless the parties negotiate an amendment that provides for AT&T to gain access to U S WEST's network for purposes of combining elements. Order No. 5961d, at & 21(g).

Thus, AT&T will pay the rebundling charge--i.e., the wholesale rate--only if U S WEST combines UNEs for AT&T or provides UNEs in existing combinations to AT&T. The rebundling charge does not apply when AT&T combines elements, even if AT&T provides a

finished service solely through UNEs purchased from U S WEST. Combined elements are not available at cost-based rates; cost-based rates apply when AT&T does the combining.

Section 1.2.3 of Attachment 3 does not fully address the Commission's decisions in Order Nos. 5961(d) and (e). The Commission rejected the provision because it is incomplete as drafted.

DONE AND DATED this 1st day of September, 1998, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary